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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

ENOCH ADAMS, JR., LEROY ADAMS,
ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN,

Plaintiffs,

v.

TECK COMINCO ALASKA INCORPORATED

Defendant.

NANA REGIONAL CORPORATION and
NORTHWEST ARCTIC BOROUGH,

Intervenors-Defendants.

Case No. A04-49 (JWS)

PLAINTIFFS STATUS REPORT

This status report is filed by the plaintiffs in response to the court's September 13, 2006 order. As noted in the defendants' separately-filed status report, the parties continue to be interested in attempting to mediate all of plaintiffs' claims in this action. They have jointly identified potential mediators and are scheduled to interview four candidates between December

1 18-20, 2006 in San Francisco and Seattle. The parties intend to confer shortly after these
2 interviews to attempt to agree on a single mediator. During the interviews they intend to discuss
3 the mediator's availability for mediation as early as the latter half of January, 2007, the parties
4 being interested in proceeding to mediation without any unnecessary delay. One of the
5 candidates to be interviewed has already advised his mediation schedule does not allow for a
6 mediation of this complexity in January. The parties will be exploring the earliest alternative
7 dates with this candidate during his interview.
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9 The parties suggest supplementing this status report on or before January 5, 2007. They
10 anticipate they will be able to advise the court by that time if they have agreed on a mediator and
11 the time set for the mediation.
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13 Although the Court requested a joint status report, defendants unilaterally filed their
14 report. Defendants' counsel circulated a draft "Joint Status Report" at 6:10 pm on December 7,
15 2006. At 11:00 am on December 8 (today), plaintiffs okayed that joint report (which is
16 substantially identical to the report filed by Defendants and the two paragraphs above), provided
17 that the report include the following paragraph:
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19 Plaintiffs continue to be concerned that Teck Cominco has not fully complied with its
20 ongoing duty to supplement discovery under Rule 26. Plaintiffs position is as follows: On
21 August 18, 2006, all parties filed a joint status report, which included the following
22 statement: "The parties recognize their ongoing duties to supplement initial disclosures
23 and responses to discovery requests. The parties propose a deadline of September 30,
24 2006 to update all disclosures and responses to discovery, as required under the civil
25 rules, to that date. This date allows time for the parties to review the supplemental
26 disclosures and discuss them with their experts before mediation, as described below."
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1 Although the Court did not address this issue in its Order on Trial of September 13, 2006,
2 in good faith Plaintiffs provided Teck Cominco with supplemental responses to discovery
3 requests on September 30, 2006. Teck Cominco did not supplement its discovery
4 disclosures until November 14, 2006, and still has not fully complied with its duty to
5 supplement discovery. Specifically, Teck Cominco has not provided Plaintiffs with an
6 update to Request for Supplemental Disclosure 7a, the internal Teck Cominco accounting
7 of its environmental violations; this Court may remember the internal documents, which
8 were the subject of an earlier motion to compel and this Court's Order of November 3,
9 2005, ordering their disclosure to the plaintiffs. It is Plaintiffs position that Teck
10 Cominco's failure to timely provide this discovery has delayed the mediation because it
11 has not allowed Plaintiffs to fully prepare for such mediation. Plaintiffs are concerned
12 that Teck Cominco is trying to delay the mediation until the issuance of Teck Cominco's
13 new EPA permit as a litigation tactic.

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17 At 4:17 pm today, Teck Cominco served, by electronic mail, 29 new discovery documents
18 comprising more than 175 pages, apparently in an effort to comply with its duty to provide
19 supplemental discovery responses. At 4:54 pm, plaintiffs counsel was informed by electronic
20 mail that defendants had unilaterally filed a "defendants' status report," and at 5:04 pm,
21 defendants' counsel Larry Hartig informed plaintiffs' counsel "I changed the draft status report to
22 state it is only being filed by defendants. I figured it would take you awhile to get through the
23 reports we sent to you this afternoon and make a decision on what you want to state in a status
24 report." Plaintiffs counsel has not had time to review the discovery documents to determine their
25 responsiveness, but observes that it is more than 60 days after the deadline both parties
26 represented to the Court they would supplement their discovery responses.

1 Plaintiffs look forward to the opportunity to try to mediate this case, but hope that
2 defendants will show better faith in the mediation than they have in complying with their
3 discovery duties. As noted above, plaintiffs fear that Teck Cominco's dilatory tactics are an
4 attempt to draw out the mediation process until EPA has issued a new permit, to try to secure
5 some litigation advantage in this suit. We note this fear so that the Court can keep close track of
6 the mediation process and ensure that it occurs in a timely and good faith manner.
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9 Respectfully submitted this 8th day of December, 2006.
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12 /S/
13 Luke Cole

14 Attorney for Plaintiffs
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 8th day of December, 2006,
3 a true and correct copy of the foregoing was served,
4 via electronic mail, on the below identified parties of
5 record:

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7 Hartig Rhodes
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22 _____
23 /S/
24 _____

25 Luke Cole
26
27
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